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Draft Model Law on Secured Transactions

Note by the Secretariat

Addendum

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Chapter VIII. Conflict of laws¹

A. General rules

Article 95. Law applicable to the rights and obligations of the grantor and the secured creditor

The law applicable to the mutual rights and obligations of the grantor and the secured creditor arising from their security agreement is the law chosen by them and, in the absence of a choice of law, by the law governing the security agreement.

[Note to the Working Group: The Working Group may wish to note that the Guide to Enactment will make reference to international texts dealing with the law applicable to contractual rights and obligations, including the Hague Principles on Choice of Law in International Contracts.]

Article 96. Law applicable to a security right in a tangible asset

1. Except as provided in paragraphs 2 to 4 and article 110, the law applicable to the creation, effectiveness against third parties, and priority of a security right in a tangible asset is the law of the State in which the asset is located.
2. The law applicable to the creation, third-party effectiveness and priority of a security right in a tangible asset of a type ordinarily used in more than one State is the law of the State in which the grantor is located.
3. If a notice with respect to security right in a tangible asset is registered in [the enacting State to specify a specialized registry, if any] or the security right is noted on [the enacting State to specify a title certificate, if any], the law applicable to the creation, third-party effectiveness and priority of a security right in a tangible asset is the law of the State under whose authority the registry is maintained or the certificate is issued.
4. The law applicable to the priority of a security right in a tangible asset made effective against third parties by possession of a negotiable document as against a competing security right made effective against third parties by another method is the law of the State in which the document is located.
5. A security right in a tangible asset (other than a negotiable instrument) in transit or to be exported from the State in which it is located at the time of the creation of the security right may be created and made effective against third parties under the law of the State of the location of the asset at the time of creation as provided in paragraph 1, or under the law of the State of the asset's ultimate destination, provided that the asset reaches that State within [a short period of time, such as 30 days, to be specified by the enacting State] after the time of creation of the security right as provided in paragraph 1.

[Note to the Working Group: The Working Group may wish to note that the Guide to Enactment will explain that paragraph 3 has been revised to ensure that a

¹ The enacting State may implement the conflict-of-laws provisions as part of the secured transactions law (at the beginning or at the end of it) or as part of a separate law (civil code or other law).

law other than the law of the location of the asset will apply only if a notice with respect to a security right has been actually registered in a specialized registry or a notation with respect to the security right has been made on a title certificate, and not only if, as a matter of principle, a notice could be registered or a notation made, as provided in recommendation 205 of the Secured Transactions Guide, on which this provision is based. The Guide to Enactment will also explain that paragraph 3 will lead to the application of the law other than the tangible asset if the asset is located in one State and a notice is registered in a specialized registry maintained under the authority of another State or a security right is noted on a certificate issued in another State. With respect to the relevant time for determining location, the Guide to Enactment will also include a cross-reference to article 102. The Working Group may wish to consider whether paragraph 5, which is based on recommendation 207 of the Secured Transactions Guide, is a conflict-of-laws rule rather than a substantive rule of the receiving State like article 21 (see A/CN.9/WG.VI/WP.63).]

Article 97. Law applicable to a security right in an intangible asset

[Subject to articles 98 and 107-110, the] [The] law applicable to the creation, effectiveness against third parties and priority of a security right in an intangible asset is the law of the State in which the grantor is located.

Article 98. Law applicable to a security right in receivables arising from a sale, lease or security agreement relating to immovable property

1. The law applicable to the creation, effectiveness against third parties and priority of a security right in a receivable arising from a sale, lease or security agreement relating to immovable property is the law of the State in which the grantor is located.

2. Notwithstanding paragraph 1, the law applicable to the priority of a security right in a receivable as against the right of a competing claimant that is registered in an immovable property registry is the law of the State under whose authority the registry is maintained, provided that under that law, registration is relevant to the priority of the security right in the receivable.

Article 99. Law applicable to the enforcement of a security right

The law applicable to issues relating to the enforcement of a security right:

(a) In a tangible asset is the law of the State where [the relevant act of] enforcement takes place; and

(b) In an intangible asset is the law applicable to the priority of the security right.

[Note to the Working Group: The Working Group may wish to consider the text within square brackets in subparagraph (a), which is intended to clarify that enforcement may involve several acts, such as a notice of default, notice of extrajudicial repossession and disposition of an encumbered asset, disposition, and distributions of proceeds of disposition (see A/CN.9/802, para. 105). Alternatively, the matter may be discussed in the Guide to Enactment. With respect to subparagraph (b), the Working Group may wish to consider whether its application

together with article 102 leads to the appropriate result. In this regard, the Working Group may wish to note that, under a combined application of subparagraph (b) and article 102, if the grantor moved since the security right was created and, thus the law applicable to priority changed, the rights of the secured creditor on default would also change, even if the secured creditor did not consent to the move or even did not know about it. The Working Group may wish to note that, if the grantor moved during the enforcement process and only at that time a priority issue arose, the law applicable would again change (see also note to article 102).]

Article 100. Law applicable to a security right in proceeds

1. The law applicable to the creation of a security right in proceeds is the law applicable to the creation of the security right in the original encumbered asset from which the proceeds arose.
2. The law applicable to the third-party effectiveness and priority of a security right in proceeds is the law applicable to the third-party effectiveness and priority of a security right in an asset of the same kind as the proceeds.

[Note to the Working Group: The Working Group may wish to note that the Guide to Enactment will explain that, in accordance with paragraph 1, which is based on recommendation 215, subparagraph (a), of the Secured Transactions Guide, if the original encumbered asset is inventory, which is sold and a receivable is generated, which in turn is paid into a bank account, the law applicable to the creation of the security right in the bank account as proceeds of the original encumbered inventory would be the law of the location of the inventory. In that case, the law applicable to the third-party effectiveness and priority of the security right would be the law applicable to bank accounts (see article 107 below).]

Article 101. Meaning of "location" of the grantor

1. For the purposes of the provisions of this chapter, the grantor is located in the State in which it has its place of business.
2. If the grantor has a place of business in more than one State, the grantor's place of business is that place where the central administration of the grantor is exercised.
3. If the grantor does not have a place of business, reference is to be made to the habitual residence of the grantor.

Article 102. Relevant time for determining location

1. Except as provided in paragraph 2, references to the location of the encumbered asset or of the grantor in the provisions of this chapter refer, for creation issues, to the location at the time of the putative creation of the security right and, for third-party effectiveness and priority issues, to the location at the time the issue arises.
2. If the rights of all competing claimants in an encumbered asset are created and made effective against third parties before a change in location of the asset or the grantor, references in the provisions of this chapter to the location of the asset or of

the grantor refer, with respect to third-party effectiveness and priority issues, to the location prior to the change in location.

[Note to the Working Group: The Working Group may wish to consider whether article 102 should provide guidance with respect to the relevant time for determining location for the purpose of enforcement issues. For example, the relevant time for determining location of the encumbered asset or the grantor for enforcement issues should be the time of the location of the asset or the grantor at the time of putative creation.]

Article 103. Exclusion of *renvoi*

A reference in the provisions of this chapter to "the law" of another State as the law applicable to an issue refers to the law in force in that State other than its conflict-of-laws provisions.

Article 104. Overriding mandatory rules and public policy (*ordre public*)

1. The provisions of this chapter do not prevent a court from applying overriding mandatory provisions of the law of the forum which apply irrespective of the law applicable under the provisions of this chapter.
2. The law of the forum determines when a court may or must apply or take into account overriding mandatory provisions of another law.
3. A court may only exclude the application of a provision of the law applicable under the provisions of this chapter if and to the extent that the result of such application would be manifestly incompatible with fundamental notions of public policy (*ordre public*) of the forum.
4. The law of the forum determines when a court may or must apply or take into account the public policy (*ordre public*) of a State the law of which would be applicable under the provisions of this chapter.
5. Paragraphs 1 and 3 do not permit the application of the provisions of the law of the forum to the third-party effectiveness and priority of a security right.

[Note to the Working Group: The Working Group may wish to note that articles 103 and 104 of the draft Model Law have been revised to be aligned with articles 8 and 11 of the Hague Principles on Choice of Law in International Contracts (see A/CN.9/802, para. 106).]

Article 105. Impact of commencement of insolvency proceedings on the law applicable

1. Subject to paragraph 2, the commencement of insolvency proceedings does not displace the provisions of this chapter.
2. The rule in paragraph 1 is subject to the effects on such issues of the application of the insolvency law of the State in which insolvency proceedings are commenced to issues such as avoidance, treatment of secured creditors, ranking of claims or distribution of proceeds.

[Note to the Working Group: The Working Group may wish to consider whether this article should be retained, in view of the fact that the draft Model Law

does not deal with substantive insolvency issues (or the law applicable in the case of the grantor's insolvency).]

B. Asset-specific rules

Article 106. Law applicable to the relationship of third-party obligors and secured creditors

The law applicable to a receivable, negotiable instrument or negotiable document also is the law applicable to:

(a) The relationship between the debtor of the receivable and the secured creditor, and the relationship between the obligor under a negotiable instrument and the holder of a security right in the instrument;

(b) The conditions under which a security right in a receivable, a negotiable instrument or negotiable document may be invoked against the debtor of the receivable, the obligor under a negotiable instrument or the issuer of a negotiable document, including whether an agreement limiting the grantor's right to create a security right may be asserted by the debtor of the receivable, the obligor under the negotiable instrument or the issuer of the negotiable document; and

(c) Whether the obligations of the debtor of the receivable, the obligor under the negotiable instrument or the issuer of the negotiable document have been discharged.

[Note to the Working Group: The Working Group may wish to note that this article is based on recommendation 217 of the Secured Transactions Guide.]

Article 107. Law applicable to a security right in a right to payment of funds credited to a bank account

1. Subject to article 108, the law applicable to the creation, effectiveness against third parties, priority and enforcement of a security right in a right to payment of funds credited to a bank account, as well as rights and duties of the depositary bank with respect to the security right, is

Alternative A²

The law of the State in which the bank with which the account is maintained has its place of business.

2. If the bank has places of business in more than one State, reference should be made to the place where the branch maintaining the account is located.

Alternative B

The law of the State expressly stated in the account agreement as the State whose law governs the account agreement or, if the account agreement expressly provides that another law is applicable to all such issues, that other law.

² A State may adopt alternative A or alternative B of this article.

2. The law of the State determined pursuant to paragraph 1 applies only if the depositary bank has, at the time of the conclusion of the account agreement, an office in that State that is engaged in the regular activity of maintaining bank accounts.

3. If the applicable law is not determined pursuant to paragraph 1 or 2, the applicable law is to be determined pursuant to [the default rules based on article 5 of the Hague Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary].

[Note to the Working Group: The Working Group may wish to note that this article is based on recommendation 210 of the Secured Transactions Guide.]

Article 108. Law applicable to the third-party effectiveness of a security right in specified types of asset by registration

If the State in which the grantor is located recognizes registration as a method for achieving effectiveness against third parties of a security right in a negotiable instrument or a right to payment of funds credited to a bank account, the law of that State is the law applicable to the issue whether third-party effectiveness has been achieved by registration under the laws of that State.

[Note to the Working Group: The Working Group may wish to note that this article is based on recommendation 211 of the Secured Transactions Guide. The Working Group may wish to consider whether this rule should apply even if a notice with respect to a security right has not been actually registered in the general security rights registry of the grantor's State. The Working Group may also wish to consider whether this rule should apply only to negotiable instruments and rights to payment of funds credited to bank accounts or also to other types of asset (e.g. tangible assets, the third-party effectiveness of a security right in which would be determined by the location of the instrument).]

Article 109. Law applicable to a security right in intellectual property

1. The law applicable to the creation, effectiveness against third parties and priority of a security right in intellectual property is the law of the State in which the intellectual property is protected.

2. A security right in intellectual property may also be created under the law of the State in which the grantor is located and may also be made effective under that law against third parties other than another secured creditor, a transferee or a licensee.

3. The law applicable to the enforcement of a security right in intellectual property is the law of the State in which the grantor is located.

Article 110. Law applicable to a security right in non-intermediated securities

Option A

1. Subject to paragraph 2:

(a) The law applicable to the creation, third-party effectiveness and priority of a security right in certificated non-intermediated securities is the law of the State in which the certificate is located; and

(b) The law applicable to the enforcement of a security right in certificated non-intermediated securities is the law of the State in which enforcement takes place.

2. The law applicable to the effectiveness of a security right in certificated non-intermediated securities against the issuer is the law of the State under which the issuer is constituted.

3. The law applicable to the creation, the effectiveness against third parties, the priority and the enforcement of a security right in uncertificated non-intermediated securities, as well as to its effectiveness against the issuer, is the law of the State under which the issuer is constituted.

Option B

The law applicable to the creation, the effectiveness against third parties, the priority and the enforcement of a security right in non-intermediated securities, as well as to its effectiveness against the issuer, is the law of the State under which the issuer is constituted.

Option C

1. The law applicable to the creation, the effectiveness against third parties, the priority and the enforcement of a security right in non-intermediated equity securities, as well as to its effectiveness against the issuer, in the law under which the issuer is constituted.

2. The law applicable to the creation, the effectiveness against third parties, the priority and the enforcement of a security right in non-intermediated debt securities, as well as to its effectiveness against the issuer, is the law governing the securities.

[Note to the Working Group: The Working Group may wish to consider the above options. Option A provides separate rules for certificated and uncertificated securities and, with respect to certificated securities, different rules for the various matters (which are the same rules as those applicable to tangible assets; see articles 96, para. 1 and 99, subpara. (a)). In particular with respect to certificated securities, this approach has the advantage of flexibility but also the disadvantage of uncertainty as it may lead to inconsistencies and overlaps. For example, some creation, third-party effectiveness and enforcement issues may be viewed as issues relating to the effectiveness against the issuer (this is the reason why paragraph 1 is subject to paragraph 2) and thus may be referred to the law of the issuer's constitution rather than the law of the certificate's location. In addition, by referring the creation, third-party effectiveness and priority of a security right in certificated securities to the law of the certificate's location, option A makes it possible for the secured creditor to manipulate the law applicable by moving the certificate from one country to another. With respect to uncertificated securities, option A has the advantage that only one rule would apply to all issues and refer to one and the same law (which is though different from the law applicable to other types of intangible asset). It has, however, the disadvantage that it does not draw a distinction between equity securities (with respect to which the law of the State of the constitution of the issuer is appropriate) and debt securities (with respect to which, the law of the State of the constitution of the issuer may not be always appropriate).]

*Option B provides one single rule that would apply to both certificated and uncertificated securities and to all issues, namely, the effectiveness against the issuer, the creation, the effectiveness against third parties, the priority and the enforcement of a security right. This approach eliminates the risks of inconsistencies or overlaps between the law of the State of issuer's constitution (which should always apply to the effectiveness against the issuer) and another law that the conflict-of-laws rules of the forum may designate for other issues (e.g. the law of the location of the certificate for the priority of a security right in certificated non-intermediated securities). In addition, referring to only one law for all issues provides greater certainty, as some matters (e.g. limitations on the transfer of securities under corporate law) may be viewed as being relevant not only to the effectiveness of the security right against the issuer but also to its creation and its enforcement. Moreover, by not referring to the law of the location of the certificate with respect to certificated securities, option B prevents the secured creditor from manipulating the designation of the applicable law by moving the certificate from one country to another. The disadvantage of option B, however, is that it departs from the *lex situs* rule for the creation, effectiveness against third parties and priority of a security right in certificated securities. Thus, the conflict-of-laws rules for certificated securities would then be different from those applicable to other intangible assets that have been assimilated for certain purposes to tangible assets (under article 100, the creation, effectiveness against third parties and priority of a security right in negotiable documents or instruments are governed by the law of the location of the document or instrument).*

Option C retains option B for equity securities (whether certificated or uncertificated) but refers to a different rule for debt securities (whether certificated or uncertificated), that is, the law of the State governing the securities to govern all issues. The justification for that approach is that, if the issuer has selected a law other than the law of the State of its constitution as the governing law of the securities, that other law should also be the law applicable to security right matters. The benefit of this approach is that one single law would govern all matters relating to debt securities, which would avoid the risks of inconsistencies arising from different laws being applicable to the various issues. The disadvantage of option C, however, is that the distinction between equity securities and debt securities may be blurred in certain circumstances (e.g. convertible securities). In addition, while option C focusses on the contractual nature of debt securities, which are analogous to receivables in that respect, it would not be consistent with the conflict-of-laws rule on the creation, effectiveness against third parties and priority of a security right in a receivable (under article 97, in the case of a receivable, the law of the State in which the grantor is located would govern those issues). As debt securities are receivables in a generic sense (monetary obligations), then a variation of option C would be to apply to debt securities the same conflict-of-laws rule as for receivables.]

Article 111. Law applicable in the case of a multi-unit State

1. If the law applicable to an issue is the law of a multi-unit State, subject to paragraph 3, references to the law of a multi-unit State are to the law of the relevant territorial unit and, to the extent applicable in that unit, to the law of the multi-unit State itself.

2. The relevant territorial unit referred to in paragraph 1 is to be determined on the basis of the location of the grantor or of the encumbered asset, or otherwise under the provisions of this chapter.

3. If the applicable law is that of a multi-unit State or one of its territorial units, the internal conflict-of-laws provisions in force in the multi-unit State or territorial unit determine whether the substantive provisions of law of the multi-unit State or of a particular territorial unit of the multi-unit State apply.

[Note to the Working Group: The Working Group may wish to consider whether paragraph 3, which is drawn from recommendation 225 of the Secured Transactions Guide means that: (a) the conflict-of-laws rules in the relevant State or unit determine whether to apply the laws of the State (as a whole) or only a territorial unit; or (b) the conflict-of-laws rules in the State or territorial unit determine whether to apply the law of a different territorial unit in the State. If it is the latter, it means that the forum State is required to master the internal conflict-of-laws rules of the State of the location of the grantor or the encumbered asset; so, it is a semi-renvoi. The Working Group may wish to note that in this regard the Assignment Convention allows a declaration by States as to the determination of the applicable priority rule as between various territorial units, but here there would be no declaration and the forum would be on its own to figure things out under the conflict-of-laws rules of another State.]

IX. Transition

Article 112. General

1. This Law comes into force on [a date to be specified by the enacting State] [...] months after a date to be specified by the enacting State].
2. This Law [repeals] [abrogates] [overrides] [modifies] the [laws to be specified by the enacting State].
3. For the purposes of this chapter:
 - (a) "Prior law" refers to the law of the enacting State that was in force immediately prior to the date on which this Law comes into force; and
 - (b) "Prior security right" means a right created before the date on which this Law comes into force that is a security right within the scope of this Law and to which this Law would have applied if it had been in force at the time when it was created.
4. This Law applies to all security rights within its scope, including prior security rights, except to the extent that this chapter provides for the continued application of prior law.

Article 113. Actions commenced before the date on which the Law comes into force

Prior law applies to:

- (a) Disputes with regard to the post-default rights and obligations of the grantor and the secured creditor that are the subject of court or arbitral tribunal

proceedings that were commenced before the date referred to in article 112, paragraph 1; and

(b) Disputes with regard to the post-default rights and obligations of the grantor and the secured creditor that are the subject of out-of-court proceedings if [notice of default] [notice of extrajudicial repossession] [notice of extrajudicial sale] [distribution of proceeds] [the step to be specified by the enacting State] has occurred before the date referred to in article 112, paragraph 1.

[Note to the Working Group: The Working Group may wish to note that the Guide to Enactment will explain that what step exactly (e.g. the submission of a claim) constitutes commencement, in the case of judicial or arbitral proceedings, will be a matter of civil procedure law. The Working Group may wish to consider whether what exactly constitutes commencement in the case of extrajudicial proceedings should be addressed in the draft Model Law or left to each enacting State.]

Article 114. Creation of a security right

1. Prior law determines whether a security right was created before the date referred to in article 112, paragraph 1.

2. A prior security right remains effective between the parties under this Law [notwithstanding that it does not comply with the creation requirements of this Law].

[Note to the Working Group: The Working Group may wish to consider whether the bracketed text is necessary.]

Article 115. Third-party effectiveness of a security right

1. A prior security right that was made effective against third parties before the date referred to in article 117, paragraph 1, in accordance with prior law continued to be effective against third parties under this Law until the earlier of:

(a) The time it would have ceased to be effective against third parties under prior law; and

(b) The expiration of [a transition period, such as six months, to be specified by the enacting State] after the date on which this Law enters into force.

2. [A security agreement [or other method of creation under the old law to be specified by the enacting State] entered into before the date referred to in article 112, paragraph 1, is sufficient as authorization for registration after the date referred to in article 112, paragraph 1.]

3. If the third-party effectiveness requirements of this Law are satisfied before third-party effectiveness would have ceased in accordance with paragraph 1, the prior security right continues to be effective against third parties for the purposes of this Law.

4. After the period of time referred to in paragraph 1, third-party effectiveness of a security right lapses and may be re-established if the third-party effectiveness requirements of this Law are satisfied.

Article 116. Priority of a security right

1. The time to be used for determining priority of a prior security right is the time it was made effective against third parties or, in the case of advance registration, became the subject of a registered notice under the prior law.
2. The priority of a prior security right is determined by prior law if:
 - (a) The security right and the rights of all competing claimants arose before the date referred to in article 112, paragraph 1; and
 - (b) The priority status of none of these rights has changed since the date referred to in article 112, paragraph 1.
3. The priority status of a security right has changed only if:
 - (a) It was effective against third parties on the date referred to in article 112, paragraph 1, in accordance with article 115, paragraph 1, and ceased to be effective against third parties as provided in article 115, paragraph 4; or
 - (b) It was not effective against third parties under prior law on the date referred to in article 112, paragraph 1, and was made effective against third parties under this Law.



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Annex I. Regulation¹

Article 1. Appointment of the registrar

The [the name of the appropriate executive or ministerial authority to be specified by the enacting State] is authorized to appoint and dismiss the registrar, and determine the registrar's duties.

Article 2. Public access

1. To submit a security right notice, a person must:
 - (a) Use the appropriate notice form prescribed by the [registrar] [Regulation];
 - (b) Identify itself in the manner prescribed by the registrar; and
 - (c) Have paid or made arrangements to pay to the satisfaction of the registrar any fee prescribed by the [registrar] [Regulation].
2. To submit a search request to the registry, a person must:
 - (a) Use the search request form prescribed by the [registrar] [Regulation]; and
 - (b) Have paid or made arrangements to pay to the satisfaction of the registrar, any fee prescribed by the [registrar] [Regulation].
3. The reason for the rejection of access is communicated by the registrar to the registrant or searcher as soon as practicable.

[Note to the Working Group: The Working Group may wish to consider whether both alternatives in square brackets in subparagraphs 1 (a) and (c), and 2 (a) and (b) of this article may be retained to leave it to each enacting State to determine whether these matters should be left to the registrar or settled in the Regulation. The Working Group may also wish to note that the term "registrar" is used instead of the term "registry" as the latter term is defined as a system and not as a person (the registrar may need to be defined to include the registry staff).]

Article 3. Rejection of a security right notice or search request

1. The registration of a security right notice is rejected by the registrar if no information is entered in one or more of the required designated fields or if the information provided is not legible.
2. A search request is rejected by the registrar if no information is entered in at least one of the fields designated for entering a search criterion or if the information is not legible.
3. The reason for the rejection is communicated by the registrar to the registrant or searcher as soon as practicable.

¹ Depending on its legislative policy and drafting technique, each enacting State may enact registry-related rules in its secured transactions law, a different law or in administrative rules.

Article 4. No additional conditions to be imposed on access to registry services

1. Information about the registrant's identity is obtained from the registrant and maintained by the registrar in accordance with article 2, subparagraph 1 (b), of this Annex, but verification of that information is not required.
2. Except as provided in article 3 of this Annex, the registrar does not reject the registration or conduct any scrutiny of the content of a notice submitted to the registry for registration.

[Note to the Working Group: The Working Group may also wish to consider whether in this or other article of the draft Model Law, or in the Guide to Enactment, it should be indicated that, while the date and time of registration is maintained in the public record (see A/CN.9/WG.VI/WP.63/Add.1, art. 31, subpara. 2), the identity of the registrant is maintained in a part of the record of the registry that is not public. The Working Group may also wish to consider whether the identity of the registrant should be maintained in the archives after the notice to which it relates has been cancelled, and thus removed from the public registry record and archived.]

Article 5. Organization of information in registered notices

The registry record is organized so that:

- (a) A unique registration number is assigned to a registered initial security right notice and all registered amendment and cancellation security right notices that contain that number are associated with the initial notice in the registry record;
- (b) The identifier and address of the person identified as the secured creditor in multiple registered security right notices can be amended by the registration of a single global amendment notice; and
- (c) The registration of an amendment or cancellation security right notice does not result in the deletion or modification of information contained in any associated registered notices.

[Note to the Working Group: The Working Group may wish to consider whether a definition of the term "registration number" should be included in article 2 of the draft Model Law (A/CN.9/WG.VI/WP.63).]

Article 6. Integrity of information in registered security right notices

1. Except as provided in articles 8 and 9 of this Annex, information contained in registered security right notices may not be amended or removed by the registrar from the registry record.
2. The information contained in registered security right notices is backed up so as to allow reconstruction in the event of loss or damage.

[Article 7. Obligation to send a copy of a registered security right notice]

1. A copy of the information in a registered security right notice, indicating the date and time when the registration of the notice became effective and the registration number, is sent by the registrar to the person identified in the notice as

the secured creditor at the address set forth in the notice, as soon as practicable after its registration.

2. Within [a short period of time, such as 10 days, to be specified by the enacting State] after the person identified in a registered security right notice as the secured creditor has received a copy of the notice in accordance with paragraph 1, that person must send a copy of the notice to the person identified therein as the grantor at the address set forth therein, or if that person knows that the address has changed, at the most recent address known to that person or an address reasonably available to that person.]

[Note to the Working Group: The Working Group may wish to note that, in view of the decision of the Working Group at its 24th session (see A/CN.9/796, para. 87), this article appears within square brackets for further consideration. The Working Group may also wish to consider whether this article should be split in two, one dealing with the obligation of the registrar and the other dealing with the obligation of the secured creditor. The Working Group may also wish to note that paragraph 2 of this article includes changes aimed at simplifying the rule contained in recommendation 18 of the Registry Guide, on which it is based.]

Article 8. Removal of information from the public registry record and archival

1. Information in a registered security right notice is removed from the public registry record upon the expiry of the period of effectiveness of the notice in accordance with article 32 or upon registration of a cancellation notice in accordance with article 39.

2. Information removed from the public registry record in accordance with paragraph 1 is archived for a period of at least [a long period of time, such as, for example, 20 years, to be specified by the enacting State] in a manner that enables the information to be retrieved by the registry in accordance with article 33.

Article 9. Language in which information in a security right notice must be expressed

The information contained in a notice must be expressed in [the language or languages to be specified by the enacting State] and in the character set determined and publicized by the registry.

[Note to the Working Group: The Working Group may wish to consider whether this article should be retained or deleted and the matter addressed therein discussed in the Guide to Enactment. If the Working Group decides that this article should be retained, it may wish to consider its placement in the draft Model Law (for example, whether it should follow article 8 of this Annex, which provides that a notice that is illegible is rejected). Alternatively, the Working Group may wish to consider whether article 36 of the draft Model Law (A/CN.9/WG.VI/ WP.63/Add.1) and/or article 15 of the Annex should provide that where the information in a registered notice is not expressed in the required language or languages the registration of the notice is ineffective or ineffective if it would seriously mislead a reasonable searcher.]

[Article 10. Correction of errors by the registrar

1. If the registrar makes an error or omission in entering into the registry record the information contained in a paper security right notice or erroneously removes from the registry record all or part of the information contained in a registered security right notice, promptly after discovering the need for the correction or restoration, the registrar must

Option A

register a notice to correct the error or omission, or restore the erroneously removed information and send a copy of the notice to the secured creditor.

Option B

inform the secured creditor identified in the registered notice so as to enable the secured creditor to register a notice to correct the error or omission or restore the erroneously removed information.

2. If a security right notice referred to in paragraph 1 is registered, it is effective

Option A

as of the time it becomes accessible to searchers of the registry record.

Option B

as of the time it becomes accessible to searchers of the registry record, except that the security right to which the notice relates retains the priority it would otherwise have under the Law over the right of a competing claimant that acquired its right prior to the registrar's error or omission or the registrar's erroneous removal of the information.

Option C

as if the error or omission had never been made or the information had never been erroneously removed.

Option D

as if the error or omission had never been made or the information had never been erroneously removed, except that the security right to which the notice relates is subordinate to the right of a competing claimant that would have priority if the notice were treated as effective only from the time of its registration and that acquired its right in reliance on a search of the registry record made before the notice was registered, provided the competing claimant did not have actual knowledge of the error or omission or the erroneous removal of the information at the time it acquired its right.]

[Note to the Working Group: The Working Group may wish to note that the options set out in this article parallel, with the necessary modifications, the options set out in article 38 of the draft Model Law, dealing with the effectiveness of amendment or cancellation notices not authorized by the secured creditor. Accordingly, the Guide to Enactment will explain that an enacting State should take

into account both articles in determining which option to adopt to ensure that the options selected are compatible.]

[Article 11. Liability of the registrar]

Alternative A

Any liability that the registrar may have under other law for loss or damage caused to a person by an error or omission in the administration or operation of the registry is limited to:

(a) An error or omission in a search result issued to a searcher or in a copy of a registered security right notice sent to the secured creditor [up to a maximum amount to be specified by the enacting State]; and

(b) Loss or damage caused by an error or omission on the part of the registrar in entering or failing to enter into the registry record the information contained in a paper security right notice or in erroneously removing all or part of the information contained in a registered security right notice from the registry record [up to a maximum amount to be specified by the enacting State].

Alternative B

The registrar is not liable for loss or damage caused to a person by an error or omission in the administration or operation of the registry.]

[Note to the Working Group: The Working Group may wish to note that the Guide to Enactment will explain that: (a) alternative A of this article is intended to leave the issue of the liability of the registrar (or the enacting State) for loss or damage caused by an error or omission in the administration or operation of the registry to other law of the enacting State and, if liability is foreseen by that other law, to limit that liability to the types of errors or omissions listed in alternative A (which may be covered by a compensation fund that the registrar or the enacting State may wish to establish and pay from the registry fees); and (b) alternative B is intended to exclude any liability of the registry (or the enacting State) for errors or omissions in relation to the administration or operation of the registry. The Working Group may further wish to note that alternative A does not contemplate any liability for the alleged failure of the registry system to properly or completely enter information directly submitted by a registrant electronically since it would be impossible to prove that this was due to the fault of the system as opposed to the registrant's own error or omission but that the secured creditor is still protected since the registrar is obligated to send a copy of the registered notice to the secured creditor who can then verify the accuracy and completeness of the information. Finally, the enacting State may also wish to address liability for false or misleading information provided by the registrar or registry staff to registrants or searchers.]

Article 12. Determination of grantor identifier

1. Where the grantor is a natural person:

(a) [Subject to subparagraph 1(c), the] [The] identifier of the grantor is the name of the grantor, as it appears in [the official documents on the basis of which the grantor's name should be determined and the hierarchy among those official documents, to be specified by the enacting State];

(b) [The enacting State should specify the various components of the secured creditor's name that must be entered in the prescribed registry notice form and provide the designated fields for each component in the notice]; and

(c) [The enacting State should address the possibility that the name of the grantor as it appears in the relevant document or source specified in subparagraph 1(a) may have been changed in accordance with applicable change of name law and whether, in this eventuality, it should specify that the new name of the grantor should be entered.]

2. Where the grantor is a legal person, the grantor identifier is the name of the grantor that appears in the most recent [document, law or decree to be specified by the enacting State] constituting the legal person.

3. [The enacting State should specify whether additional information must be entered in the designated field of the prescribed registry notice form in special cases, such as where the grantor is subject to insolvency proceedings, a trustee, or a representative of the estate of a deceased person.]

Article 13. Determination of secured creditor identifier

1. Where the secured creditor is a natural person, the secured creditor identifier is the name of the secured creditor as it appears in [the official documents on the basis of which the secured creditor's name should be determined and the hierarchy among those official documents, to be specified by the enacting State].

2. Where the secured creditor is a legal person, the secured creditor identifier is the name of the secured creditor that appears in the most recent [document, law or decree to be specified by the enacting State] constituting the legal person.

3. [The enacting State should specify whether additional information must be entered in the designated field of the prescribed registry notice form in special cases, such as where the grantor is subject to insolvency proceedings, a trustee, or a representative of the estate of a deceased person.]

Article 14. Sufficient description of encumbered assets

1. A generic description that refers to all of the grantor's movable assets within a generic category includes all of the grantor's present and future assets within that category.

2. A generic description that refers to all of the grantor's movable assets includes all of the grantor's present and future movable assets.

Article 15. Impact of errors in required information

1. The secured creditor is responsible for ensuring that the information in a security right notice is set forth in the correct designated field in the notice and that the information is accurate and complete, and conforms to the requirements of the Law and the Regulation.

2. An incorrect statement of the grantor identifier in a security right notice does not render the registration of the notice ineffective if the notice would be retrieved by a search of the registry record using the grantor's correct identifier as the search criterion.

3. Except as provided in paragraph 4, an incorrect or insufficient statement of the information required in a security right notice other than the grantor's identifier does not render the registration of the notice ineffective unless the error would seriously mislead a reasonable searcher.

4. An incorrect statement in a security right notice with respect to the period of effectiveness of registration² or the maximum amount for which the security right may be enforced,³ does not render the notice ineffective[, except to the extent it seriously misled third parties that relied on the information set out on the notice].

5. An incorrect statement of the grantor identifier in a security right notice does not render the registration of the notice ineffective with respect to other grantors correctly identified in the notice.

6. An insufficient description of an encumbered asset in a security right notice does not render the registration of the notice ineffective with respect to other encumbered assets sufficiently described.

[Note to the Working Group: The Working Group may wish to consider whether the bracketed text at the end of paragraph 4 (which is drawn from rec. 29, subpara. (c) of the Registry Guide, which in turn is drawn from rec. 66 of the Secured Transactions Guide) should be retained. Whether the period of effectiveness or maximum amount indicated in the notice is greater or lower than it was actually intended, the notice is effective and third parties relying on the notice as it appears on the registry record are protected (this point may be clarified in the Guide to Enactment or in para. 4 of this article). In this respect, the Working Group may wish to note that the Guide to Enactment will explain that: (a) the reference to a reasonable searcher in paragraph 3 means that the "seriously misleading test" in this paragraph is objective (that is, it is not necessary for a competing claimant to establish that it was actually misled as a result of the error in order for an error that would be seriously misleading from the perspective of a reasonable searcher to render a registration ineffective); and (b) the reference in paragraph 4 to parties that actually relied to their detriment on an erroneously stated registration period or maximum amount in a registered notice means that the "seriously misleading test" in this paragraph is subjective (that is, a third party challenging the notice needs to establish that it was actually misled as a result of the error; see Secured Transactions Guide, chap. IV, paras. 84 and 96).]

Article 16. Secured creditor's authorization

In the case of a change in the secured creditor identified in a registered initial security right notice, the new secured creditor may register an amendment or cancellation security right notice relating to the initial notice at any time after the change.

² This provision will be necessary, if the enacting State implements option B or C of article 32.

³ This provision will be necessary, if the enacting State implements article 34, subparagraph (c).

Article 17. Information required in an amendment security right notice

1. An amendment security right notice must contain the following items of information in the designated field for each item:
 - (a) The unique registration number assigned by the registry to the initial notice to which the amendment relates; and
 - (b) The information to be added, deleted or changed, as the case may be.
2. An amendment notice may relate to one or more than one item of information in a notice.

Article 18. Global amendment of secured creditor information

Option A

A person may register a single global amendment security right notice to amend its identifier and address in all registered security right notices in which it is identified as the secured creditor.

Option B

A person may request the registrar to register a single global amendment security right notice to amend its identifier and address in all registered security right notices in which it is identified as the secured creditor.

[Note to the Working Group. The Working Group may wish to note that the Guide to Enactment will explain that, if an enacting State adopts the first option stated in this article, it will need to establish special access procedures to enable a person to identify all notices in which it is named as the secured creditor and to register a global amendment notice, since the identifier of the secured creditor is not a search criterion generally available to the public for searching the public registry record.]

Article 19. Information required in a cancellation security right notice

A cancellation security right notice must contain in the designated field the unique registration number assigned by the registry to the initial notice to which the cancellation relates.

Article 20. Compulsory registration of an amendment or cancellation security right notice

1. In a case falling within subparagraphs 1(b) to (d) of article 39, the secured creditor may charge the grantor any fee agreed between them for registering an amendment or cancellation security right notice.
2. Notwithstanding paragraph 1, no fee or expense may be charged or accepted by the secured creditor for complying with a written request from the grantor sent in accordance with paragraph 2 of article 39.

Article 21. Search criteria

A search of the public registry record may be conducted according to:

- (a) The identifier of the grantor; or
- (b) The registration number assigned to the registered security right notice.

Article 22. Search results**Option A**

1. A search result indicates the date and time when the search was performed and either lists any registered security right notices that contain information that matches the search criterion provided by the searcher exactly and sets forth the registration history and all the information contained in these notices, or indicates that no registered notice contains information that exactly matches the search criterion provided by the searcher.

Option B

1. A search result indicates the date and time when the search was performed and either lists any registered security right notices that contain information that matches the search criterion provided by the searcher exactly and closely, and sets forth the registration history and all the information contained in these notices, or indicates that no registered notice contains information that exactly or closely matches the search criterion provided by the searcher.

2. An official search certificate indicating the search result may be issued by the registrar at the request of the searcher.

[Note to the Working Group: The Working Group may wish to consider whether paragraph 2 of option B of this article should apply only to searches against the grantor identifier and not the registration number if the enacting State implements a close-match system. There does not seem to be a commercial or practical reason for close matches with respect to registration numbers. The Working Group may also wish to note that the Guide to Enactment will explain that if an enacting State chooses to implement the type of close match system contemplated by alternative B, the rules used by the registry for determining what constitutes a close match should be specified and publicized.]

Article 23. Fees for the services of the registry**Option A**

- 1. The following fees are payable for the services of the registry:
 - (a) Registration of a security right notice:
 - (i) Paper: [...];
 - (ii) Electronic: [...];
 - (b) Searches:
 - (i) Paper: [...];
 - (ii) Electronic: [...];

(c) Certificates:

(i) Paper: [...];

(ii) Electronic: [...];

2. The registry may enter into an agreement with a person to establish a registry user account to facilitate the payment of fees.

Option B

The [administrative authority to be specified by the enacting State] may determine the fees and methods of payment for the services of the registry by decree.

Option C

The following services of the registry are free of charge [types of service to be specified by the enacting State.]
